Basic information

1998/0360(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71) Amended by 2006/0008(COD) Amended by 2007/0152(COD) Amended by 2010/0380(COD) Amended by 2016/0397(COD) Amended by 2018/0064(COD) See also 2006/0006(COD) **Subject** 4.10.10 Social protection, social security	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
EMPL Employment and Social Affairs	LAMBERT Jean (V/ALE)	26/07/1999

Former committee for opinion	Former rapporteur for opinion	Appointed
BUDG Budgets		
JURI Legal Affairs, Citizens' Rights	The committee decided not to give an opinion.	23/04/2003
LIBE Civil Liberties and Internal Affairs	LINDEPERG Michèle (PSE)	26/01/1999
PETI Petitions	FONTANA Alessandro (PPE)	15/03/1999

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2558	2004-01-26
Employment, Social Policy, Health and Consumer Affairs	2512	2003-06-02
Employment, Social Policy, Health and Consumer Affairs	2313	2000-11-27
Employment, Social Policy, Health and Consumer Affairs	2549	2003-12-01
Employment, Social Policy, Health and Consumer Affairs	2392	2001-12-03
Employment, Social Policy, Health and Consumer Affairs	2431	2002-06-03
Employment, Social Policy, Health and Consumer Affairs	2357	2001-06-11

	Employment, Social Policy, Health and Consumer Affairs	2373	2001-10-08
	Agriculture and Fisheries	2441	2002-06-27
	Agriculture and Fisheries	2578	2004-04-26
	Social Affairs	2081	1998-04-07
	Social Affairs	2226	1999-11-29
	Social Affairs	2269	2000-06-06

European Commission	Commission DG	Commissioner
	Employment, Social Affairs and Inclusion	

Key events

Date	Event	Reference	Summary
07/04/1998	Debate in Council		
21/12/1998	Legislative proposal published	COM(1998)0779	Summary
12/03/1999	Committee referral announced in Parliament, 1st reading		
29/11/1999	Debate in Council		
06/06/2000	Debate in Council		
27/11/2000	Debate in Council		Summary
11/06/2001	Debate in Council		
08/10/2001	Debate in Council		Summary
03/06/2002	Debate in Council		Summary
27/06/2002	Debate in Council		Summary
02/06/2003	Debate in Council		Summary
11/06/2003	Vote in committee, 1st reading		Summary
11/06/2003	Committee report tabled for plenary, 1st reading	A5-0226/2003	
02/09/2003	Debate in Parliament		
03/09/2003	Decision by Parliament, 1st reading	T5-0365/2003	Summary
09/10/2003	Modified legislative proposal published	COM(2003)0596	Summary
26/01/2004	Council position published	15577/6/2003	Summary
29/01/2004	Committee referral announced in Parliament, 2nd reading		
06/04/2004	Vote in committee, 2nd reading		Summary
06/04/2004	Committee recommendation tabled for plenary, 2nd reading	A5-0234/2004	
19/04/2004	Debate in Parliament		
20/04/2004	Decision by Parliament, 2nd reading	T5-0293/2004	Summary

26/04/2004	Act approved by Council, 2nd reading		
29/04/2004	End of procedure in Parliament		
30/04/2004	Final act signed		
30/04/2004	Final act published in Official Journal		

Technical information

Procedure reference	1998/0360(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amended by 2006/0008(COD) Amended by 2007/0152(COD) Amended by 2010/0380(COD) Amended by 2016/0397(COD) Amended by 2018/0064(COD) See also 2006/0006(COD)
Legal basis	EC Treaty (after Amsterdam) EC 042 EC Treaty (after Amsterdam) EC 308 EC Treaty (after Amsterdam) EC 018 Rules of Procedure EP 050
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/5/20071

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0226/2003	11/06/2003	
Text adopted by Parliament, 1st reading/single reading		T5-0365/2003 OJ C 076 25.03.2004, p. 0120-0178 E	03/09/2003	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0234/2004	06/04/2004	
Text adopted by Parliament, 2nd reading		T5-0293/2004 OJ C 104 30.04.2004, p. 0033-0153	20/04/2004	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	05240/2004	14/01/2004	
Council position	15577/6/2003 OJ C 079 30.03.2004, p. 0015-0058 E	26/01/2004	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1998)0779 OJ C 038 12.02.1999, p. 0010	21/12/1998	Summary
Modified legislative proposal	COM(2003)0596	09/10/2003	Summary
Commission communication on Council's position	COM(2004)0044	27/01/2004	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2004)0332	22/04/2004	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0090/2000 OJ C 075 15.03.2000, p. 0029	27/01/2000	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Regulation 2004/0883
OJ L 200 07.06.2004, p. 0001-0049 Summary

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 29/04/2004 - Final act

PURPOSE : to simplify and modernize the coordination of social security systems so that citizens may better exercise their right to free movement within the EU, whether for studies, leisure, or for professional reasons, without losing the rights and protection to which they are entitled under social security.

LEGISLATIVE ACT : Regulation 883/2004/EC of the European Parliament and of the Council on the coordination of social security systems

CONTENT : Regulation 1408/71/EC ensures the coordination of the social security schemes of the Member States in order to protect the rights of persons moving within the European Union. Since its adoption in 1971, that Regulation had undergone a considerable number of amendments designed to take account of changes in national legislations, improve certain provisions, fill in gaps or lay down rules covering the situation of certain specific categories of persons. In addition, some provisions need to be clarified in order to avoid difficulties of interpretation, as evidenced by a large number of judgments delivered by the Court of Justice. The aim of coordination should also be to complement the development of the European Union as a whole. The rules on coordination no longer have the sole aim of ensuring the free movement of workers, but are about protecting the social security entitlements of all persons moving within the European Union. Coordination must therefore be seen from the perspective of European citizenship and the building of a Social Europe.

While retaining the guiding principles and essential elements of the current Regulation 1408/71/EEC, the new Regulation will introduce a new legal framework through a streamlining of its provisions and the broadening of its material and personal scope.

The key principles of Regulation 1408/71/EC, such as the assimilation of facts or events, the aggregation of periods and the exportability of benefits have been maintained, while being given improved visibility.

In addition, the principle that each person is subject to the legislation of one Member State only enables this person to apply for social security benefits in a single Member State. This also facilitates the work of the national administrative bodies.

Moreover, the competence for almost all social security benefits being conferred on the basis of the place of activity of the person concerned, the link between the receipt of contributions and the payment of benefits is preserved.

Measures aimed at avoiding the overlapping of social security benefits acquired in one Member State with other benefits of the same kind acquired in another Member State will considerably limit the possibility of unfair advantages being derived from free movement within the Community, thus allowing for full application of the equal treatment principle.

The Regulation therefore consists in particular of the following essential elements:- the personal scope of the Regulation is extended to cover all nationals of Member States who are covered by the social security legislation of a Member State. This means that not only employed workers, self-employed workers, civil servants, students and pensioners but also non-active persons are protected by the coordination rules. This simplifies and clarifies the rules determining the legislation applicable in cross-border situations;

- the material scope of the Regulation is extended to cover statutory pre-retirement schemes, which means that the beneficiaries of such schemes will have a guarantee that benefits will be paid, will be covered for health care and will receive family benefits even if they reside in another Member State;

- the principles of equal treatment and the assimilation of facts are strengthened;

- insured persons staying temporarily in another Member State will be able to benefit from health care judged to be medically necessary during that stay;

- there is provision for a greater obligation for cooperation and mutual assistance between the institutions of the Member States for the benefit of citizens.

It must be noted that the Council approved the two amendments made by Parliament at second reading. The first related to notification of agreements and the second brings the period to be completed by family members into line with that to be completed by former frontier workers themselves in order to be eligible for benefits in kind within the territory of the previous State of employment.

ENTRY INTO FORCE AND DATE OF APPLICATION : 20/05/2004.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 22/04/2004 - Commission opinion on Parliament's position at 2nd reading

The Commission can accept the two amendments proposed by the European Parliament. Namely: - specification that the provisions of the agreement mentioned in Article 1, point 1, must be notified to Parliament and the Council; - bringing the period to be completed by family members into line with that to be completed by former frontier workers themselves, in order to be eligible for benefits in kind within the territory of the previous State of employment, as provided for in Article 18 of the Regulation.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 09/10/2003 - Modified legislative proposal

The Commission accepts most of the Parliament's amendments as they stand. Two were accepted in part and four were rejected. The key amendments accepted by the Commission include: - the scope of the Regulation is limited to nationals of EU Member States, stateless persons and refugees; - paternity benefits are included in the scope of the Regulation; - the condition regarding residence in the territory of a Member State, which is currently required for the provision on equal treatment to be applied, is removed; - Member States may conclude conventions with each other; - the provision to limit the combination of benefits of the same kind for one and the same insurance period is acceptable; - persons staying in a Member State other than the competent State are entitled to benefits in kind which become medically necessary (without constituting an emergency). This amendment is favourable to insured persons, as it removes the requirement that benefits in kind are to be provided during a stay in another Member State only in an emergency; - a recital emphasising the need to provide for coordinating rules for contractual provisions which complement or replace social security legislation in order to allow aggregation of periods of insurance and the waiving of residence clauses; - the principle of equal treatment is of particular importance for frontier workers, who reside in a Member State other than the competent State; - the members of a frontier worker's family are entitled to benefits in kind in the competent State; - the amendment reflecting the Court of Justice's case law. On the one hand, it is consistent with the Court's interpretation that direct assumption by the competent insurance institution of the cost of out-patient treatment provided in a Member State other than that in which a person is insured should not be subject to prior authorisation. On the other hand, the Court has ruled that prior authorisation may be imposed, subject to certain conditions, for in-patient treatment. The amendment also requires the patient's medical condition to be taken into

account when deciding whether or not to authorize travel to another Member State to receive treatment; - retired frontier workers can obtain health care in their Member State of residence or in the Member State where they were last employed; - the Commission's proposal is that unemployed frontier workers should receive unemployment benefits from the State where they were last employed rather than, as at present, their State of residence. Luxembourg has a very large number of frontier workers who live in Belgium, Germany or France. A sudden change to the present rule could have substantial financial consequences for Luxembourg. The introduction of a transitional period for Luxembourg, as proposed in this amendment, is therefore very reasonable. Amendments that are not accepted include the following: - the delegation of additional tasks in terms of coordination of social security systems to the Administrative Commission; - the amendments stating that, in order to be eligible for cash benefits, frontier workers must submit to examination and reintegration measures in accordance with the legislation of the competent State; - a clause obliging institutions to exchange information on proposed changes to legislation, including taxation legislation.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 26/01/2004 - Council position

The common position, agreed unanimously, essentially preserves the Commission's initial proposal as amended by the amended proposal. The common position therefore consists in particular of the following essential elements: - the personal scope of the Regulation is extended to cover all nationals of Member States who are covered by the social security legislation of a Member State. This means that not only employed workers, self-employed workers, civil servants, students and pensioners but also non-active persons are protected by the coordination rules. This simplifies and clarifies the rules determining the legislation applicable in cross-border situations; - the material scope of the Regulation is extended to cover statutory pre-retirement schemes, which means that the beneficiaries of such schemes will have a guarantee that benefits will be paid, will be covered for health care and will receive family benefits even if they reside in another Member State; - the principles of equal treatment and the assimilation of facts are strengthened; - insured persons staying temporarily in another Member State will be able to benefit from health care judged to be medically necessary during that stay; - there is provision for a greater obligation for cooperation and mutual assistance between the institutions of the Member States for the benefit of citizens. As regards the amendments approved by the European Parliament in its first reading, the common position accepts 31 out of the 47 proposed. These aim in particular to: - call on the Administrative Commission "to foster and develop cooperation between Member States and their institutions in social security matters, particularly with a view to responding to particular questions from certain categories of persons; to facilitate, in the field of coordination of social security, transnational cooperation measures"; - make the link between social security legislations and certain contractual provisions; - provide the principle of equal treatment which is important for all workers, not only for cross-border workers as defined by the Regulation; - provide entitlement to benefits in kind in the State of employment for members of the family of cross-border workers; - make clear that that members of the family of cross-border workers may receive benefits in kind during a stay in the competent State, unless that State refuses this by virtue of an entry in Annex III to the Regulation; - provide that a retired former cross-border worker may continue to receive benefits in kind in the former State of employment, on condition that the latter State and the State bearing the cost of benefits have opted for this solution and are listed in Annex V. Given the fact that seven Member States are already listed in this annex, the Commission can accept this solution as a compromise which improves the situation for pensioners who are former cross-border workers. With regard to the new provisions introduced by the Council, they can be summarised as follows: - Title I - General provisions : the Council, for reasons of legal safety, has opted for an exhaustive list of branches ofsocial security instead of the indicative list in the Commission proposal, adding the branch "pre-retirement " to the current list; - Title II - Determining the legislation to which a person is subject : the Council includes details of the legislation applicable either in the context of an unemployment situation or in the event of carrying out activities in the territory of two or more Member States; - Title III - Chapter 1: Sickness, maternity and paternity : the Council has amended the structure of the chapter. Sections have been inserted in order to distinguish provisions relating to pensioners and members of their families from those applicable to other categories of insured persons. A distinction is also made between benefits in kind and cash benefits. With regard more specifically to pensioners, the common position makes amendments which essentially have implications for the sharing of the burden of benefits between institutions. In this regard the Council, for both benefits in kind and cash benefits, preferred to maintain the status quo. Since financial arrangements between the institutions of the Member States are dealt with here, and in principle insured persons' entitlement to sickness protection is not affected; - Title III - Chapter 2: Industrial accidents and occupational diseases : the common position provides for the principle of bearing the costs on condition that the institution has agreed in advance to such transport, taking due account of the elements used to justify it. The Commission considers that this problem deserved a bolder solution. It points out that this question may be examined at a later stage within the framework of the implementing Regulation; - Title III - Chapter 3: Death grants : the Council has included a specific chapter for death grants, as set out in the current Regulation 1408 /71/EEC, although they were dealt with in the Commission proposal as sickness benefits in kind. - Title III - Chapter 4: invalidity benefits : the Commission had proposed replacing the current "dual" system of coordination with a single coordination system, so that invalidity benefits are always calculated in accordance with the provisions of the chapter on "pensions". The common position makes provision for maintaining the "dual" system, but only for those Member States which have an "A" system and have opted for this approach by means of an entry in an annex; - Title III - Chapter 5: Old-age and survivor's pensions : one amendment concerns the aggregation of pensions with benefits of a different nature, dealing with situations of unjustified aggregation. The common position also maintains the provision in the current Regulation 1408/71/EEC whereby a Member State is not obliged to grant a pension if the length of periods completed under its legislation amounts to less than one year and if, taking only these periods into account, no entitlement to benefits has been established under the provisions of that legislation. In this case, the periods in question are taken into account by the other Member States concerned. Since the provision lays down that there shall be no loss of rights for the insured person, the Commission can accept this position. The common position also maintains the provisions particular to special schemes for civil servants, which is acceptable to the Commission, given the particular characteristics of theseschemes; - Title III - Chapter 6: Unemployment : the Commission proposal introduced two basic amendments to the chapter: - extending from three months to six the period during which the unemployed person may seek work in another Member State without losing entitlement to unemployment benefits; - ending the current system whereby the unemployed cross-border worker receives unemployment benefits from the State of residence rather than the competent State (the State where he was last employed). The Council was unable to reach agreement on these two points. In order to reach a compromise, two aspects have been singled out: the treatment of unemployed persons on the one hand and, on the other, the distribution of the financial burden of unemployment allowances between the State of last employment and the State of residence. With regard to the situation for the persons concerned, the common position provides for: - maintaining the current three-month period during which the unemployed person may seek work in another Member State without losing entitlement to unemployment

allowances, while permitting the competent institution to extend this period to six months; - maintaining the current system whereby the unemployed cross-border worker receives unemployment benefits from the State of residence (with the obligation to be available to the employment services of that State); - the system is supplemented, however, by the unemployed cross-border worker also having the right to be available to the employment services of the competent State. With regard to the sharing of the financial burden between the Member States, the current principle in Regulation 1408 /71/EEC of the State of residence having competence has been maintained. However, the competent State (State of last employment) should, for a period of three months, reimburse to the State of residence the costs of unemployment benefits paid by the latter State. This period of reimbursement is extended to five months where the worker has carried out an activity during 12 of the preceding 24 months in the Member State to whose legislation he was last subject. In order to answer the concerns of Luxembourg, a specific transitional provision has been inserted; - Title III - Chapter 7: Pre-retirement benefits : the Commission laid down a particular provision on aggregation owing to the nature of pre-retirement benefits and to the fact that the legislation of the Member States does not make entitlement to this type of benefits subject to the completion of periods of residence. In its common position, the Council excludes the rule on the aggregation of periods for granting benefits; - Title III - Chapter 8: Family benefits : to recall the Commission proposal aimed to restructure this chapter, laying down a single rule for all family benefits where entitlements exist in a number of Member States: the State laying down the highest amount pays the benefits, with the burden then being shared in proportion to the number of States concerned. The common position opts for a less ambitious solution, but one consisting of a single chapter and identical provisions for all categories of persons, putting an end to the existing distinction between pensioners and orphans on the one hand and othercategories of insured persons on the other. In order to determine the legislation applicable where entitlements exist in a number of Member States, the Council has adopted a coherent set of priority rules, giving priority to the legislation of the Member State of employment. The system established also guarantees that the insured person is paid the highest amount of benefits, in the form of a differential supplement paid by another Member State whose legislation also establishes an entitlement to benefits. The common position also lays down favourable provisions for orphans in Article 69 and greater cooperation between the Member States on the implementation of the priority rules (Article 68 (3)). In contrast, the Council decided to exclude advances on maintenance payments from the scope of the Regulation. It has also maintained the exclusion for special birth and adoption benefits currently in Regulation 1408/71 /EEC, owing to their close link with the socio-economic environment of the State concerned; - Title IV - Administrative Commission and Advisory Committee for the coordination of social security systems : the common position provides clarification on certain points of the terms of reference of the Administrative Commission and the Technical Commission (Article 73 d)). It also inserts in the Regulation a provision relating to the Audit Board which is currently in the implementing Regulation. - Title V - Miscellaneous provisions : the common position makes substantial improvements with a view to strengthening the duty of cooperation between institutions but also between the institutions and insured persons; - Title VI - Transitional and final provisions : provision is made for a transition period for the implementation of Article 65 (2) and (3) for Luxembourg which corresponds to the global agreement of the Council on the unemployment chapter. The Council has also added a provision to ensure that the Member States introduce provisions relating to supplying the appropriate information on changes brought about by the new Regulation. Finally, the Council has established methods to support the changeover from the current Regulation 1408/71/EEC to the new coordination instrument. In this regard, a particular provision is inserted in Article 90 so that Regulation 1408/71/EEC retains its force until certain Regulations and agreements referring to this Regulation are repealed or amended.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 27/11/2000

At the end of the discussions, while noting the difficulties felt by some delegations, the Presidency noted that the substantial progress made enabled the majority of Member States to record their agreement in principle on the central elements of the proposal for a Directive, and in particular on: 1) minimum requirements for the right to information and consultation of employees in undertakings within the European Community; 2) the scope of the Directive, enabling Member States to choose between undertakings or establishments employing at least 50 or 20 employees respectively. 3) the general concept of the framework, in particular as regards: - the affirmation of two principles to be respected in all cases when defining or implementing the arrangements for information and consultation: useful impact of the exercise and spirit of cooperation between the social partners; - the general definition of the arrangements for exercising that right, with the adoption of more detailed provisions on the practical procedures and on the content of information and consultation being delegated to the Member States; - the need for national provisions to protect the confidentiality of sensitive information so that the right to information and consultation may be exercised without compromising the smooth operation of the undertaking, by means of appropriate review procedures based on the formulas adopted in the Directive on the European Works Council; - the affirmation of the principle of adequate protection for employees' representatives and appropriate measures and penalties in the event of infringement of the right to information and consultation, to be laid down at national level. 4) importance of collective bargaining and recognition of the role of the social partners in accordance with national traditions and practices, through: - the possibility of transposition by means of agreement; - the possibility for the social partners to define freely by agreement the practical arrangements for information and consultation, under the conditions laid down by the Member States. The Presidency invited Coreper to continue examining the text in order to draft compromise proposals on the points still unresolved.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 02/06/2003

The Council agreed on a general approach, pending the European Parliament's Opinion in first reading, on Title III (special provisions concerning various categories of benefit) of the proposal for a Regulation on the co-ordination of social security systems in the Union. Final approval will be subject to agreement on the text as a whole, pending which agreements on the different chapters are considered provisional. The following chapters of Title III of the draft Regulation are covered by the agreed general approach: - Chapter 4 (invalidity benefits) : this chapter includes provisions for determining how invalidity benefits should be paid, and what national authorities are competent to pay them, in the case of those individuals who have worked in more than one Member State. The general principle is that the competent authority for the payment of the invalidity benefits is the one of the country

where the person became invalid. It also includes provisions with respect to the worsening of conditions of invalidity. The general principle is that the country in which the worsening occurred is responsible for paying the benefits. However, the financial burden may be distributed among several countries. - Chapter 5 (old-age and survivors. pensions) : this chapter includes provisions that allow an individual having worked in different Member States to have one single interlocutor for the calculation of old-age and survivors' pensions, namely the authority of the country where the individual resides when the pension is requested. It allows, for instance, for the calculation and aggregation of all working periods in different Union countries to be made by one single competent authority. - Chapter 8 (special non-contributory cash benefits) : this includes provisions regulating cash benefits (e.g. minimum revenue/allowance in some Member States) that are independent from a person's previous contributions to social security. The general principle is that these benefits cannot be transferred from one country to another and are thus only payable in the country of residence of the beneficiary. To recall, the proposal aims at reforming Regulation 1408/71/EEC on the application of social security schemes to employed persons and their families moving within the Community. It also aims at simplifying Community legislation in order to remove obstacles to the free movement of persons created by the co-existence of different national social security systems. Given the complexity of the subject it has been decided to submit to the Council at the end of each Presidency separate parts of the proposal to facilitate the examination process. It is recalled that at its meeting on 3 June 2002, the Council reached agreement on a general approach as regards Titles I (general provisions) and II (determination of competent legislation). Moreover, the Council reached agreement on a general approach at its meeting on 2-3 December 2002 on chapter 1 (sickness, maternity and paternity), chapter 2 (accidents at work and occupational diseases) and chapter 3 (death grants) of Title III.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 03/09/2003 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution based on the draft by Jean LAMBERT (Greens/EFA, UK) making several amendments to the Commission's proposals. (Please see the summary dated 11/06/03.) Other amendments include: - provisions to the effect that those who leave their job in one Member State for family reasons will not lose their right to unemployment benefit; - improved conditions for frontier workers and their families as well as retired frontier workers; - a 5 year transition period for Luxembourg in view of the large number of cross-border workers residing in the country. Other amendments seek to clarify and tighten up the wording of some of the Commission proposals and add further definitions.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 27/01/2004 - Commission communication on Council's position

The Commission approves the common position as a whole, as it broadly meets the aims of the Commission proposal. Moreover, it takes into account most of Parliament's amendments. At the end of long negotiations, although greater simplification in some areas would have been preferable, it constitutes a balanced and positive overall compromise for insured persons over all chapters. The Commission regrets however that the text of the common position was not able to make more significant progress in the following areas: - with regard to transport costs for the victim of an industrial accident or occupational disease (Title III- Chapter 2), the common position provides for the principle of bearing the costs on condition that the institution has agreed in advance to such transport, taking due account of the elements used to justify it. The Commission considers that this problem deserved a bolder solution. It points out that this question may be examined at a later stage within the framework of the implementing Regulation; - invalidity benefits : Title III - Chapter 4 : the Commission had proposed replacing the current "dual" system of coordination with a single coordination system, so that invalidity benefits are always calculated in accordance with the provisions of the chapter on "pensions". The current system lays down that, if a person has been insured exclusively under legislation where the amount of invalidity benefit is independent of the length of insurance periods ("A" systems), that person is entitled to a single benefit, granted by the Member State where the person was insured at the time the invalidity occurred ("single pension" system). If the person was insured either exclusively under legislation where the amount depends on the length of the insurance period ("B" systems) or under both types of insurance, he is entitled to benefits calculated in accordance with the chapter on "pensions" ("pro rata" system). The common position makes provision for maintaining the "dual" system, but only for those Member States which have an "A" system and have opted for this approach by means of an entry in an annex. For the Commission, this is an acceptable compromise. While regretting the fact that this simplification could not take place, the Commission notes that the current system does not appear to cause any major difficulties; - unemployment : Title III - Chapter 6 : the Commission proposal introduced two basic amendments to the chapter: - extending from 3 months to 6 the period during which the unemployed person may seek work in another Member State without losing entitlement to unemployment benefits; ending the current system whereby the unemployed cross-border worker receives unemployment benefits from the State of residence rather than the competent State (the State where he was last employed). The Council was unable to reach agreement on these two points. In order to reach a compromise, two aspects have been singled out: the treatment of unemployed persons on the one hand and, on the other, the distribution of the financial burden of unemployment allowances between the State of last employment and the State of residence. The Commission can accept this position overall. Firstly, it points out that the conditions under which the unemployed personmay seek employment in another Member State without losing unemployment allowances are improved with a view to facilitating job-seeking. In addition, the cross-border worker is in a better position to find employment since he can register to seek work both in the State of residence and in the State in which he formerly worked. These two elements, offering an unemployed person a better chance of finding employment, correspond to the Commission's aims and constitute an improvement over the current situation. On the other hand, the arrangements relating to the sharing of the financial burden of unemployment benefits between the Member States do not affect the unemployed person's entitlement to benefit; - family benefits : Title III - Chapter 8 : the Commission proposal aimed to restructure this chapter, laying down a single rule for all family benefits where entitlements exist in a number of Member States: the State laying down the highest amount pays the benefits, with the burden then being shared in proportion to the number of States concerned. The common position opts for a less ambitious solution, but one consisting of a single chapter and identical provisions for all categories of persons, putting an end to the existing distinction between pensioners and orphans on the one hand and other categories of insured persons on the other. The common position lays down favourable provisions for orphans and greater cooperation between the Member States on the implementation of the priority rules. The Commission accepts this position, which clarifies and

facilitates implementation of the provisions of this chapter and also maintains entitlement to the highest family benefits for insured persons. In contrast, the Council decided to exclude advances on maintenance payments from the scope of the Regulation. It has also maintained the exclusion for special birth and adoption benefits currently in Regulation 1408/71/EEC, owing to their close link with the socio-economic environment of the State concerned. Nevertheless, bearing in mind the balanced overall nature of this chapter, with regard to the extension of benefits to non-active persons, the Commission can accept the Council's position.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 03/12/2001

Following discussion at the Council on 8 October 2001, and as instructed by the Stockholm European Council, the Council drew up, in the form of conclusions, the parameters (basic principles) for the modernisation of Regulation No 1408/71 (see Annex). These parameters will form the basis for reform of the Regulation. A total of 12 parameters has been established: general parameters applying to the Regulation horizontally and specific parameters applying to the various categories of benefits. Particular mention, among the parameters, should be made of those seeking to improve insured persons' rights, through extension of the Regulation's personal scope (parameter 2) and material scope (parameter 3), improve cross-frontier access to care for retired frontier workers on a pension (parameter 8), extend the unemployment chapter to cover self-employed schemes and simplify the conditions for exporting unemployment benefits (parameter 10), and extend pensioners' and orphans' rights as regards family benefits (parameter 11). On the basis of these parameters, future Presidencies will proceed with the review of the Regulation and drafting of the actual text.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 03/06/2002

The Council was asked to take a decision on the first part of the proposal for a Regulation aimed at reforming the coordination of social security systems (Regulation 1408/71/EEC), and reached broad consensus on Titles I and II. However, as one delegation had not yet been able to withdraw its general scrutiny reservation on that part of the text, the Council instructed the Permanent Representatives Committee to continue discussing the dossier so that a general approach could be agreed before the Seville European Council (21 and 22 June 2002). To recall, the aim of the proposal, the need for which is acknowledged by all delegations, is to simplify Community legislation in order to remove obstacles to the free movement of persons created by the coexistence of different national social security systems within the internal market.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 27/06/2002

The Council confirmed the general approach on the text of Titles I and II of the proposal for a Regulation on the coordination of social security systems as it stands following the proceedings of the Council (Employment and Social Policy) on 3 June 2002 and Coreper on 19 June 2002. It should be noted that, since only a partial text was examined, the agreement reached is subject to overall agreement on the entire legislative act. It should be noted that the proposal is intended to replace Council Regulation 1408/71/EEC of 14 June 1971. The aim is to simplify Community legislation in order to remove obstacles to the free movement of persons created by the coexistence of different national social security systems within the internal market.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 21/12/1998 - Legislative proposal

OBJECTIVE: to revise and simplify the regulation on coordination of social security systems in the Community. CONTENT: the main objective of this proposal is to simplify regulation 1408/71/EEC in order to make social security legislation less complex and more manageable. It also provides an opportunity for integrating a number of proposed amendments to Regulation 1408/71/EEC which have been pending before the Council for several years into a single text. Finally, in addition to efforts at simplification, the proposal also rationalizes the concepts, rules and procedures applicable, even though the system of coordination, from the point of view of the guiding principles and its main elements, remains the same. Main amendments: 1) persons covered by the coordination rules: the proposed regulation will apply to all persons covered by social security legislation in a Member State (the term "person" will now replace the terms "salaried and non salaried workers", "members of their family" and "refugees"). This implies that the coordination system: - will cover persons who are not strictly speaking included in the active population (e.g. students) but who are nonetheless in a social security scheme (cf. CNS0876), - will extend to third-country nationals, provided that they are in a social security scheme in one of the Member States (cf. CNS97320); 2) matters covered by the coordination rules: the proposal: - extends the list of the social security branches which come under the coordination rules in order to include new types of benefits, such as pre-retirement benefits (cf. CNS96001). In addition, Community provisions will continue to apply to all the classic branches of social security (sickness and maternity, accidents at work, occupational diseases, invalidity benefits, death grants, unemployment benefits and family benefits), although the list is not exhaustive and new types of benefits may be added; - modifies a

number of provisions relating to unemployment without, however, changing the basic structure of the system: at present, an unemployed person who travels to another Member State in search of work has the right to continue drawing benefits for three months. The proposal seeks to extend this period to six months under the same terms as those which currently apply, in order to reflect actual conditions on the current labour market more accurately. On the same subject, it is also proposed to grant unemployed persons the right to receive unemployment benefits (other than cash benefits) which aim to facilitate access to work; compliance with the conditions laid down by the Member State offering these benefits will be pre-requisite to maintaining the right to cash benefits from the Member State in question. Apart from these radical changes, the main basic principles of coordination have been maintained: - conflicting laws: Community provisions continue to be based on two main principles: a) the insured person is only subject to the legislation of one Member State at a time; b) the insured person is insured in the Member State in which he/she pursues a professional activity; for persons who are no longer active (e.g. pensioners) or who do not pursue a professional activity, the applicable law will be that of the State of residence. Special rules apply to posted workers and to persons working in several Member States; - basis for coordination: the proposal is founded on the principle of equal treatment (there must be a guarantee that a person resident on the territory of a Member State is subject to the same obligations and enjoys the same benefits as those offered to nationals of that Member State). This principle is reinforced by three elements: a) assimilation of the facts: situations which occur in other Member States are to be treated as if they had taken place in the Member State whose legislation applies; b) aggregation of periods: periods of insurance, employment or residence completed under the legislation of one Member State are taken into account for entitlement to benefits under the legislation of another Member State; c) retention of rights: benefits can be paid to persons residing in the territory of any Member State.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 20/04/2004 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a resolution drafted by Jean LAMBERT (Greens/EFA, UK) and made a few amendments to the common position. (Please see the document of 06/04/04.)

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 08/10/2001

The Council held a preliminary debate on the parameters to be laid down with a view to modernising Regulation 1408/71/EEC. The Presidency raised two questions on the situation of frontier workers and one on extending the scope of the Regulation to include third-country nationals: - Sickness benefits for retired frontier workers: the question raised was whether such retired frontier workers should not be entitled to continue to receive sickness benefits in the Member State where they last worked. The President concluded the discussion by noting that offering retired persons this choice, as a matter of course, posed problems for a number of Member States, particularly as it discriminated against other pensioners who did not enjoy the same right. However, he deduced from the discussions that even those Member States recognised that there were some concrete situations which called for pragmatic solutions, such as those involving workers who had embarked on courses of medical treatment before retiring. - Unemployment benefits for frontier workers: the question was which State was responsible for providing unemployment benefits for a former frontier worker: the State where he /she last worked or the State of residence? The President concluded that there was room for further discussion, since there were still differences of opinion on making the State of last employment responsible for such provision. - Extension to third-country nationals: no Member State had opposed extending the scope of Regulation 1408/71/EEC, even though some had linked this issue to the choice of legal basis for such an extension. The Commission had proposed Articles 18 (free movement of European citizens), 42 (social security coordination) and 308 (measures linked to completion of the Internal Market). A number of Member States were more in favour of Article 63(4) (immigration policy). The Council decided to instruct the Permanent Representatives Committee to find a solution to the question of an appropriate legal basis. The parameters are due to be adopted at the meeting of the Employment and Social Policy Council on 3 December 2001, before being forwarded to the Laeken European Council on 14 and 15 December 2001. At the same time, a timetable should be drawn up for examining the provisions of the Regulation under the Spanish and Danish Presidencies, which will then be required to make drafting proposals on the texts.

Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 01/12/2003

The Council unanimously reached a partial political agreement (with the exception of the Annexes) on the proposal for a Regulation aiming at replacing the current social security co-ordination system, on the basis of a Presidency compromise proposal. The Council invited the Permanent Representatives Committee to continue work on the Annexes with a view to reaching full political agreement on the draft Regulation before the end of the year. The two outstanding issues connected with this problematic dossier, which has been on the table of the Council since 1999, concerned the provisions regarding the unemployment chapter. 1) The first issue related to the payment of unemployment benefits to unemployed frontier and seasonal workers. There were still reservations regarding the cost of unemployment benefits to be provided by the State of residence to unemployed persons who do not reside in the State in which they were previously employed. As the State of residence did not receive the corresponding contributions, it was proposed that the State of last activity should, within certain limits, reimburse the cost of the unemployment benefits provided by the State of residence. All delegations and the Commission could accept the latest Presidency's compromise proposal whereby: - the transfer of competence from the State of the last activity employment) to the State of residence would be made clear in the Regulation; - the State of last activity

would reimburse unemployment benefits for a minimum of three months; - the period of reimbursement would be extended to five months where the person concerned has, during the preceding 24 months, completed periods of employment or self-employment of at least 12 months in the Member State to whose legislation he was last subject, where such periods would qualify for the purpose of establishing entitlement to employment benefits; - As regards relations between Luxembourg on the one hand, and France, Germany and Belgium on the other, the application and the duration of this reimbursement period will be subject to the conclusion of bilateral agreements. 2) The second issue concerned Luxembourg's request for a specific transitional period in view of the need to reinforce its employment services that would result from frontier workers being able to register additionally with the employment service of their State of last activity. The Council agreed that a two-year transitional period should be granted to Luxembourg. The Luxembourg delegation, having pointed to the high number of migrant, cross-border and seasonal workers who work in Luxembourg, welcomed the agreement. Commissioner Diamantopoulou expressed satisfaction that the Presidency's compromise had made it possible to achieve a decisive breakthrough on this politically sensitive dossier.